



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Francis – McGann

v

West Atlantic UK Limited

Heard at: Birmingham

On: 25 July 2018

Before: Employment Judge Broughton

Appearances:

For Claimant: no appearance

Respondent: Mr I Besant

JUDGMENT

The Claimant's claim of breach of contract fails and is dismissed.

The respondent's counter claim succeeds and they are awarded £4725.

The respondent's application for costs should be put in writing within 21 days so that the claimant has an opportunity to respond.

Reasons

1. The claimant failed to attend or offer any evidenced reasons for such failure.
2. Nonetheless I heard evidence from the respondent's witnesses and saw the relevant documents. The respondent is a commercial freight airline operator.

Facts

3. The claimant is a pilot. He applied for a position with the respondent as a Captain and was successful. He was trained by them and then commenced work as a Captain.

4. It was clear, and appeared undisputed, that the claimant had lied on his application to the respondent. Specifically, he claimed to have previously worked as a Captain when his previous positions had all been as a First Officer.

5. In addition, to hide this fact, he had provided a false reference from a false email address. It purported to be from Desilijic Tiure which, it turns out, is actually the alternative name of Jabba the Hut, a character from Star Wars.

6. When the respondent discovered these facts they addressed them with the claimant. They were initially denied but, ultimately, largely admitted.

7. Whilst I noted that the claimant had a number of explanations and justifications for his actions it was inescapable that he had lied on his application and provided a false name and email address for his referee.

8. This was a very serious matter. His training at the outset of his employment with the respondent was arranged based on his alleged experience.

9. Had the respondent known that he had never been a Captain they may not have employed him and they would, in any event, have been obliged to provide him with more training.

10. If there had been an incident the consequences for the respondent, and others, could have been catastrophic. Even if no lives were lost, any enquiry would have discovered that the claimant was inadequately trained for the position in which he flew.

11. In those circumstances the respondent was well within their rights to treat the claimant's actions as gross misconduct. They were, therefore, entitled to summarily dismiss him.

12. It was common ground that, as an alternative, they offered him the opportunity to resign on 30 June 2017 and he did so, expressly stating that his resignation was "with immediate effect".

13. He subsequently claimed 3 months' notice pay, being his contractual entitlement had he resigned with notice.

14. The respondent counter-claimed for recovery of the claimant's training costs.

15. The claimant had expressly confirmed in writing by a credit agreement signed on 2 March 2017 that such costs were recoverable should his employment end within the first 6 months.

Decision

16. The respondent's clear and unchallenged evidence was that the claimant was given the option to resign but only if he did so with immediate effect. That must be right.

17. Firstly, there was no reason for the claimant to have used those words if that was not the agreement reached.

18. In addition, the respondent was entitled to dismiss without notice because of the claimant's gross misconduct. It is inconceivable that they would have intended to pay him 3 months' salary in the circumstances.

19. Moreover, under the claimant's contract of employment, the respondent was entitled to dismiss him on 1 weeks' notice, even if he hadn't committed gross misconduct. As a result, again, it is totally implausible that they would have willingly offered to pay him 3 months' wages in the circumstances of this case.

20. Finally, the meaning of the words "with immediate effect" is clear and unambiguous. As a result the claimant must have known what he was agreeing to. He was, after all, avoiding another dismissal on his employment record which, in this case, was entirely justified.

21. It seemed to me far more likely that the claimant, having been dishonest at least twice in his application to the respondent, was being disingenuous by subsequently claiming that he had a legitimate expectation that he would receive notice pay.

22. As a result his claim for breach of contract fails and is dismissed.

Counter-claim

23. The respondent provides training to all new pilots on commencement of their employment. This comes at considerable cost. Without it they could not safely employ the pilots. Such training also, inevitably, improves the employability of those pilots.

24. As a result, to secure a return on their investment, the respondent requires pilots to repay their training costs should they leave within 6 months, or tapering reduced amounts thereafter. That, it seems to me, is not unreasonable or unfair.

25. The claimant signed a document to confirm that he understood and agreed to such repayments.

26. In those circumstances the claimant owes the respondent repayment of the full costs claimed. The fact that he obtained his employment by deception only further confirms this.

27. The respondent's counter-claim succeeds.

28. The respondent indicated an intention to apply for costs. The claimant has a right to respond to that. It is hoped that a further hearing, and further costs, can be avoided.

29. Accordingly, if the respondent makes their application in writing and the claimant doesn't require a hearing, he can respond in writing, including evidence of his income, outgoings and assets and I can make a determination on the papers.

Employment Judge Broughton

6 August 2018